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“I Erensia, Lina’Ia’, Espiritu-ta”

**FILED**  
**DISTRICT COURT OF GUAM**

OCT 12 2007 *nba*

**JEANNE G. QUINATA**  
**Clerk of Court**

DISTRICT COURT OF GUAM

TERRITORY OF GUAM

JULIE BABAUTA SANTOS, *et. al.*,

Civil Case No. 04-00006

Petitioners,

-v-

**MEMORANDUM RE: 26 U.S.C. § 7430**

FELIX P. CAMACHO, *et. al.*

Respondents.

CHARMAINE R. TORRES, *et al.*,

Civil Case No. 04-00038

Plaintiffs,

-v-

GOVERNMENT OF GUAM, *et al.*,

Defendants.

Civil Case No. 04-00049

MARY GRACE SIMPAO, *et al.*,

Plaintiffs,

-v-

GOVERNMENT OF GUAM,

Defendant.

-v-

FELIX P. CAMACHO, Governor of Guam,

Intervenor-Defendant.

**ORIGINAL**

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Interim Class Counsel Michael F. Phillips, counsel for the Petitioner, individually and on behalf of the all those similarly situated, submits this Memorandum regarding 26 U.S.C. § 7430, as this Court directed in its order of September 13, 2007.

26 U.S.C. § 7430(a) provides that “[i]n any administrative or court proceeding which is brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, the prevailing party may be awarded a judgment or a settlement for— … (2) reasonable litigation costs incurred in connection with such court proceeding.” Reasonable litigation costs are defined in section 7430(c)(1)(B)(iii) to include “reasonable fees paid or incurred for the services of attorneys in connection with the court proceeding, except that such fees shall not be in excess of \$125 per hour unless the court determines that a special factor, such as the limited availability of qualified attorneys for such proceeding, the difficulty of the issues presented in the case, or the local availability of tax expertise, justifies a higher rate.”

Section 7430 does not automatically apply to all tax actions. Subsection (a) makes clear that a court "may" award attorney fees under this section. Furthermore, § 7430(b) sets forth limitations to the award of costs and fees under the section. For costs and fees to be awarded pursuant to section 7430, a party must move for such as the award is a reimbursement of costs and fees incurred by the prevailing party.

However, Plaintiffs are not moving for an award of costs and attorney fees under 26 U.S.C. § 7430. In fact, the Settlement Agreement between the parties specifically provides that plaintiffs would not seek for the Government to pay attorney fees and costs in addition to the earned income credit made to the class. Therefore, section 7430 does not presently apply.

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2 Respectfully submitted this 12th day of October, 2007.  
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